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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,067	03/23/2000	Ronald O. Bubar	4645/31	1606

7590 05/24/2002

NIKOLAI & MERSEREAU, PA
820 INTERNATIONAL CENTRE
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3325

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

19

DATE MAILED: 05/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/535,067

Applicant(s)
Bubar

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 1, 2002
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulucci (4842882) for the same reason set forth in paragraph 7 of paper no. 3.
2. In the response filed March 1, 2002, applicant submitted another declaration to show unexpected result of the claimed invention over the prior art. The declaration states the crust in the Exhibit 2 of the declaration filed Nov. 28, 2001 reflects the crust resulting when the method of example 6 of the 882 patent is employed. While the declaration clarifies the process which was employed in preparing the crust shown in the last declaration, both declarations contradict the description of the prior art. Paulucci discloses in example 6, the crust is a laminated crust which is characterized by a crispy upper and bottom surface with a flaky airy interior. Paulucci discloses on column 2 lines 22-23 “ a laminated process in which multiple layers of sheeted dough are layered one on top of the other with shortening disposed therebetween”. This disclosure clearly shows a laminating process with alternating layers of fat. The term “ flaky airy interior” is a known term in the art which is normally used to describe pastry products such as a croissant which have alternating layers of fat and dough. Both declarations do not offer any explanation for the inconsistency between the showing and the description of the prior art. While the declaration states that a method in accordance with example 6 was used, it is not known if the method is followed exactly as described in example 6. One skilled in the art would not describe a crust as shown in exhibit 2 as having “ a flaky airy interior”. The prior declaration states that “ the shortening flakes being squeezed into the dough and upon cooking, the flakes melt leaving voids in the crust much like the open pores in a loaf of bread”. This description is not found in the

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Paulucci disclosure and is contrary to the disclosure of Paulucci on column 2 that states “ the resulting crust has a flaky, airy interior”. For the reason stated above, the declaration is not found persuasive to overcome the prior art rejection.

In the response filed March 1, 2002, applicant comments that “ commercial success” is a consideration as an indicia of non-obviousness. While this is true, applicant has not presented any evidence to show commercial success. The fact that one method is discontinued in favor of another method is not evidence of commercial success. Commercial success takes into many factors such as advertisement, economic factor, populational changes, eating habits etc... There is no evidence of record which shows commercial success resulting solely from the product.

3. Applicant's arguments filed March 1, 2002 have been fully considered but they are not persuasive.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

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will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 23, 2002


LIEN TRAN
PRIMARY EXAMINER
